ORIGINAL 8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EXHIBIT 4
PENGAD 800-631-6989

UNITED STATES OF AMERICA,

-vs-

D-4 VICTOR M. MERCADO,

Defendant.

CRIMINAL NO. CR-10-20403-NGE

HON. NANCY G. EDMUNDS

Offense: 18 U.S.C. § 371

Statutory Maximum Penalties:
5 years imprisonment
$250,000 fine,
3 years supervised release

FILED
NOV 05 2012
CLERK'S OFFICE
DETROIT

______________________________/

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant Victor M. MERCADO and the government agree as follows:

1. **GUILTY PLEA**

A. Count of Conviction

The defendant will enter a plea of guilty to Count One of the Fifth Superseding Information, which charges conspiracy to violate the Hobbs Act, in violation of Title 18, United States Code, Sections 371 and 1951, and for which the penalty is a maximum term of imprisonment of five years and a fine of up to $250,000. The defendant also is subject to a special assessment of $100 and up to three years of supervised release.

B. Elements of Offense

The elements of Count One (conspiracy to commit a Hobbs Act violation), are:

1. That two or more persons agreed to violate the Hobbs Act as described in paragraph 1.B.4., below;

2. That the defendant knowingly and voluntarily joined the conspiracy knowing of and intending to help accomplish one or more of its objects;

3. That a member of the conspiracy took one of the overt acts described in the charging document for the purpose of advancing or helping the conspiracy.

4. Object of Conspiracy – Hobbs Act – 18 U.S.C. § 1951

   (a) One of the co-conspirators wrongfully obtained property from another with that person's consent;

   (b) The property was obtained under color of official right or by fear of economic harm; and

   (c) Interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree.

A. Factual Basis for Guilty Pleas

The following facts are a sufficient and accurate basis for defendant's guilty pleas:

During the period from June 2002 to June 2008, MERCADO served as Director of the Detroit Water & Sewerage Department (DWSD). In this capacity, MERCADO was responsible for administering over $2 billion in contracts with private companies. During this time, MERCADO reported to the Mayor of Detroit, Kwame M. Kilpatrick. From January 2002 to January 2006, Kilpatrick served as Special Administrator over the DWSD. That designation, arising from a federal consent decree resolving a lawsuit alleging federal environmental violations, gave Kilpatrick authority to award DWSD contracts directly with outside parties, bypassing city procurement procedures, and also gave Kilpatrick responsibility over the operation of DWSD's wastewater treatment plant to ensure compliance with environmental standards.

Kilpatrick used his position as Mayor of Detroit and Special Administrator of DWSD to pressure city contractors—who submitted proposals to or were awarded contracts by DWSD—to give subcontracts or payments obtained under those contracts to Bobby W. Ferguson, or risk having the contracts delayed, awarded to competitors, or canceled, resulting in economic harm. Invoking and otherwise exploiting his well-known affiliation with former Mayor Kilpatrick, Ferguson pressured city contractors to hire or pay him for DWSD contracts. Both DWSD and the contractors who were pressured did business in interstate commerce. The extortionate actions impacted interstate commerce.

MERCADO—at the direction of Kilpatrick and his associates—took steps to help Ferguson receive a large portion of contracts, subcontracts or payments for DWSD business. These steps included influencing the procurement process to Ferguson's advantage, as well as directing a bidder to include Ferguson on a DWSD contract in order to receive favorable consideration on the bid. MERCADO took these steps as a result of regular and consistent pressure from former Mayor Kilpatrick and his staff to help Ferguson obtain DWSD business regardless of procurement policies, rules and regulations. MERCADO tried to avoid this pressure, but from time to time he influenced the process to Ferguson's benefit in order to pacify and placate the former Mayor.

2. SENTENCING GUIDELINES

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Guideline Range

Absent a downward departure, the government calculates that the top of defendant's guideline range would be higher than **60 (sixty) months**, which represents the statutory maximum term of imprisonment for a violation of Title 18, United States Code, Section 371. Accordingly, the 60-month statutory maximum becomes the top of the guidelines range. The parties agree that the Court should grant a downward departure from the applicable guideline range under U.S.S.G. § 5K.2.0 because there exists mitigating circumstances of a kind and to a degree not adequately taken into consideration in the sentencing guidelines in advancing the objectives set forth in 18 U.S.C. §§ 3553(a)(2) and (b)(1). In particular MERCADO took the actions set forth in the factual basis, above, because of duress, under circumstances not amounting to a complete defense. The parties agree that if the Court grants this downward departure, MERCADO's guidelines range should be no higher than **eighteen (18) months.**

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. §3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range of **eighteen (18) months**, as determined by Paragraph 2B.

B. Supervised Release

A term of supervised release, if imposed, follows the term of imprisonment. There is no agreement on supervised release. In other words, the Court may impose any term of supervised release up to the statutory maximum term, which in this case is **3 years**. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of **$100** and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

The parties agree that the fine will be no more than the maximum amount of $100,000.

E. Restitution

The Court shall order restitution to every identifiable victim of defendant's offenses. The government recommends that restitution be limited to the amount of money or items of value the defendant personally received or benefitted from, and the amount of losses, if any, of which he was personally aware. The Court will determine who the victims are and the amounts of restitution they are owed.

4. USE OF WITHDRAWN GUILTY PLEA

If the Court allows defendant to withdraw his guilty plea for a "fair and just reason" pursuant to FED. R. CRIM. P. 11(d)(2)(B) , defendant waives his rights under FED. R. EVID. 410, and the government may use his guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

5. OTHER CHARGES

If the Court accepts this agreement, the government will dismiss all remaining charges in this case at the time of defendant's sentencing.

6. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Part 2. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 2.

7. WAIVER OF APPEAL

Defendant waives any right he may have to appeal his conviction. If the sentence imposed does not exceed the 18- month maximum allowed by Part 3 of this agreement, defendant also waives any right he may have to appeal his sentence. If the sentence imposed is within the guideline range recommended by the government as determined by Par. 2B the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range.

8. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION

If defendant is allowed to withdraw his guilty pleas or if any convictions entered pursuant to this agreement are vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the U.S. Attorney's Office for the Eastern District of Michigan.

10. SCOPE OF PLEA AGREEMENT

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

11. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, at the U.S. Attorney by **9:00 a.m. on Nov. 5, 2012**. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

BARBARA MCQUADE
United States Attorney

MARK CHUTKOW
Assistant United States Attorney
Chief, Public Corruption Unit

R. MICHAEL BULLOTTA
Assistant United States Attorney

JENNIFER BLACKWELL
Assistant United States Attorney

ERIC DOEH
Assistant United States Attorney

Date: November 1, 2012

By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorneys' advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyers, and has had all of his questions answered by his lawyers.

VICTOR MERCADO
Defendant

Date: November 5, 2012

MARTIN CRANDALL

JOHN MINOCK
Attorneys for Defendant